

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County
Court of Common Pleas
The Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2017-000157

WILLIAM L. BRIGHT, JR.,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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RESPONDENT'S QUESTIONS PRESENTED

- I. Is there evidence of probative value in the record to support the PCR judge's finding Petitioner failed to meet his requisite burden of proof of establishing plea counsel was ineffective for failing to adequately explain the full consequences of Petitioner's guilty plea and by failing to clarify to Petitioner he was not accepting a plea deal with a zero to three year sentence?

- II. Is there evidence of probative value in the record to support the PCR judge's finding Petitioner's guilty plea was entered into voluntarily and knowingly?

STATEMENT OF THE CASE

Procedural History

Petitioner is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court of Greenville County. During its April 2015 term, the Greenville County Grand Jury indicted Petitioner for first-degree burglary (2014-GS-23-6960). Petitioner was subsequently indicted during the December 2015 term for armed robbery and possession of a weapon during the commission of a violent crime (2014-GS-23-6962). Rodney W. Richey, Esquire, represented Petitioner. On February 8, 2016, Petitioner pled guilty to the lesser included offense of second-degree burglary and attempted armed robbery pursuant to recommendation by the State before the Honorable Edward W. Miller. The weapons charge was dismissed. Judge Miller sentenced Petitioner to concurrent terms of ten years for each charge. Petitioner did not appeal his convictions or sentence.

On June 17, 2016, Petitioner filed an application for post-conviction relief. Respondent made its return on November 4, 2016, requesting an evidentiary hearing be convened. An evidentiary hearing was held on December 8, 2016, at the Greenville Courthouse before the Honorable John C. Hayes III. Petitioner was present at the hearing and was represented by William G. Yarborough III, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office. Petitioner testified at the hearing. Additionally, plea counsel Rodney W. Richey, Esquire, and Annette Bright, Petitioner's mother also testified. Thereafter, Judge Hayes denied Petitioner's PCR application by written order filed December 21, 2016.

Petitioner filed a timely notice of appeal. Thereafter, Petitioner filed his Petition for Writ of Certiorari and Appendix. This Return to Petition for Writ of Certiorari follows.

Factual History

On May 14, 2014, a homeowner was taking her dog outside when she opened the door and was confronted by Petitioner and his codefendant. Petitioner's codefendant was armed with a shotgun and demanded the victim put her hands up. Petitioner and his codefendant then made their way into the home and forced the victim as well as other victims into the homeowner's bedroom. Once inside the bedroom and while holding all victims at gunpoint, Petitioner and his codefendant demanded personal belongings and effects from all the victims to include a .38 caliber pistol which was handed over to Petitioner. The codefendant was positively identified from a lineup by one of the victims at the home that evening. Approximately a week later, law enforcement got a firm identification of Petitioner. They went to his home on an unrelated call during which time he was in his vehicle. Once there, law enforcement was able to locate the .38 caliber gun that was stolen in the possession of the Petitioner. Petitioner gave a statement indicating "I was just over there with the codefendant and I didn't really do anything," so he was not arrested at that time. The codefendant was arrested and identified Petitioner as being the other participant in the crime with him that evening.

STANDARD OF REVIEW

The post-conviction relief court's findings of fact and conclusions of law receive great deference during appellate review. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). The proper standard of review of a post-conviction relief decision is whether "any evidence of probative value" exists to sustain the lower court's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) (emphasis added). However, appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCPP; Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. 115, 386 S.E.2d 624. Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or

omission of counsel was unreasonable. Strickland, 466 U.S. at 689. “[E]very effort be made to eliminate the distorting effects of hindsight” and to evaluate counsel’s decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, courts must be wary of second-guessing counsel’s tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

ARGUMENT

- I. **There is evidence of probative value in the record to support the PCR judge's finding Petitioner failed to meet his requisite burden of proof of establishing plea counsel was ineffective for failing to adequately explain the full consequences of Petitioner's guilty plea and by failing to clarify to Petitioner he was not accepting a plea deal with a zero to three year sentence**

Petitioner asserts the PCR judge erred in holding trial counsel was not ineffective by failing to adequately explain the full consequences of the Petitioner's guilty plea and by failing to clarify to Petitioner he was not accepting a plea deal with a zero to three year sentence. This argument is without merit.

At the evidentiary hearing, Petitioner testified he was represented by plea counsel for little over a year and a half. (App.p.95). He further testified plea counsel only went over discovery once with him at his office prior to Petitioner's expected trial. (App.p.95). Petitioner also testified he provided a witness to plea counsel who was supposedly in the house when the burglary took place; however, Petitioner testified he was not aware if plea counsel ever subpoenaed the witness. (App.p.95). Petitioner testified when his case was called for trial a second time he was ready to go to trial but felt as though he had not been adequately prepared by plea counsel. (App.p.95). He testified plea counsel told him he had received an offer from the solicitor for a zero to three year sentence. Additionally, Petitioner's mother testified she was a witness to plea counsel relaying this offer to Petitioner. (App.p.95). On cross-examination Petitioner acknowledged at no time during the guilty plea proceeding did anybody mentioned a zero to three year plea offer to the judge. (App.p.96)

Furthermore, plea counsel testified he met with Petitioner "plenty of times" prior to trial. (App.p.96). Plea counsel testified he investigated and prepared the case as best he could with an uncooperative client. (App.p.97). He further testified he never told Petitioner there was a plea

deal available for a zero to three year sentence. (App.p.97). Plea counsel testified the standard practice when “pleading off the trial docket” is to plea without a specific recommendation from the state. (App.p.97). Plea counsel additionally testified there was no “plea deal” per se, simply an agreement for a reduced sentence. (App.p.97) Plea counsel testified had Petitioner really had a plea offer for zero to three years on the table, he would have argued for a probationary sentence. (App.p.97).

The PCR court found Petitioner’s allegation with regard to the alleged zero to three year plea agreement to be without merit. (App.p.98). Moreover, the PCR court found both Petitioner and his mother’s testimony not credible for two reasons. (App.p.98). First, the PCR court found plea counsel testified he never relayed such an offer while finding plea counsel’s testimony credible. Second, the PCR court would found it incredible if any attorney were to tell a client facing these charges the sentence would be in a zero to three year range. (App.p.98). Further, the PCR court found it unlikely a solicitor’s office would offer such a deal to a defendant facing these charges. (App.p.98).

There is evidence of probative value to support the PCR court’s finding plea counsel did not render Petitioner ineffective assistance of counsel. As discussed above, plea counsel testified he never told Petitioner there was a plea deal available for a zero to three year sentence. (App.p.97). Additionally, Petitioner acknowledged on cross-examination nobody during the guilty plea proceeding mentioned a zero to three year plea offer to the judge. (App.p.96). Furthermore, the PCR court found the testimony of Petitioner and his mother to not be credible. This Court gives great deference to a PCR judge’s findings where matters of credibility are involved. Drayton v. Evatt, 312 S.C. 4, 11, 430 S.E.2d 517, 521 (1993). Additionally, Petitioner answered in the affirmative when the plea judge asked him if understood the potential penalties

he was facing for the charges. (App.p.4). Accordingly, there is evidence of probative value to support the PCR court's ruling.

II. There is evidence of probative value in the record to support the PCR judge's finding Petitioner's guilty plea was entered into voluntarily and knowingly

Petitioner also asserts the PCR judge erred in finding Petitioner's plea was not involuntarily given when Petitioner was under the impression he was accepting a plea deal for a zero to three year sentence when he actually received ten years. This argument is also without merit.

The PCR court found Petitioner's claim he was not aware of the sentences he was facing during his guilty plea to be without merit. (App.p.98). The PCR court noted despite the argument presented by Petitioner at the post-conviction relief hearing, the plea record clearly indicated Petitioner was informed of his rights as required by Boykin as well as the potential sentences he was facing. (App.p.98). Additionally, the PCR court noted Petitioner testified he was stunned at hearing of his ten year sentence and further he did not comprehend any of information relayed to him by the court as a result. (App.p.98). However, the PCR court found Petitioner responded affirmatively when asked by the plea judge if he understood his rights, the penalties he was facing and if he wanted to plead guilty to the charges. (App.p.99). Furthermore, the PCR court found Petitioner presented no additional evidence at the hearing for the Court to determine why his statements during his guilty plea should not be considered conclusive. (App.p.99). The PCR court concluded it must accept Petitioner's statements during the guilty plea as conclusive and find Petitioner's guilty plea was entered knowingly, intelligently and voluntarily. (App.p.98).

It is clear from the record there is evidence of probative value to support the PCR judge's finding Petitioner's guilty plea was entered into voluntarily and knowingly. As the PCR court correctly noted, Petitioner answered in the affirmative when the plea judge asked if he

understood his rights, the penalties he was facing and if he wanted to plead guilty to the charges he was facing. (App.p.98). Additionally, absent Petitioner's non-credible testimony, the PCR court correctly found Petitioner's guilty plea was entered into knowingly and voluntarily. Furthermore, the PCR court found Petitioner presented no additional evidence at the hearing why his statements during his guilty plea should not be considered conclusive. A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir.1976). Accordingly, there is evidence of probative value to support the PCR court's ruling.

CONCLUSION

For the foregoing reasons, the Petition should be denied. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

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November 8, 2017

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CERTIFICATE OF SERVICE

I, DeShawn H. Mitchell, certify that I have today served the within Return to Petition for Writ of Certiorari upon Petitioner by depositing a copy of the same in inter-agency mail and addressed to:

William G. Yarborough, III, Esquire
522 North Church Street
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I further certify that all parties required by Rule to be served have been served. This 8th day of November, 2017.



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